



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/736,210	12/15/2000	Barry E. Ambrose	56130.0000064	8550
7590	02/18/2005		EXAMINER	
			MIRZA, ADNAN M	
			ART UNIT	PAPER NUMBER
			2145	

DATE MAILED: 02/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/736,210	AMBROSE, BARRY E.	
	Examiner	Art Unit	
	Adnan M Mirza	2145	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 27 September 2004.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-22 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-22 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____ .

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
2. Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takashima et al (U.S. 6,563,794) and Naegeli et al (U.S. 6,574,797).

As per claims 1,20 Takashima disclosed a method for data transmissions from a server, comprising the steps of - b) determining the maximum bandwidth for the at least one data transmission (col. 33, lines 59-67); c) determining a delay for the at least one data transmission based on the maximum bandwidth specified; and d) transmitting the at least one data transmission after the delay has expired (col. 25, lines 26-31).

However Takashima did not disclosed in detail a) configuring a maximum bandwidth for at least one data transmission.

In the same field of endeavor Naegeli disclosed the upstream receiver and related hardware components are designed or configured to receive data at the maximum bandwidth at the maximum symbol rate (col. 8, lines 35-38).

It would have been obvious to one having ordinary skill in the art at the time of the invention was made to have incorporated the upstream receiver and related hardware components are designed or configured to receive data at the maximum bandwidth at the maximum symbol rate as taught by Naegeli in the method of Takashima to reduce the congestion during transmission of the data packet and allocation of the bandwidth make it more efficient during data transmission.

3. As per claims 2,12 Takashima-Naegeli disclosed wherein the server comprises a trivial file transfer protocol server (Takashima, col. 4, lines 52-57).

4. As per claims 3,13 Takashima-Naegeli disclosed further comprising the step of: e) enabling the user to specify a maximum number of sessions that may be operated substantially simultaneously (Takashima, col. 4, lines 44-51).

5. As per claims 4,14 Takashima-Naegeli wherein the delay is based on at least the maximum number of sessions specified (Takashima, col. 25, lines 26-31).

6. As per claims 5,15 Takashima-Naegeli disclosed wherein the delay comprises a time delay (Takashima, col. 12, lines 25-33).

7. As per claims 6,16 Takashima-Naegeli disclosed wherein the delay is based on at least a number of data transmissions (Takashima, col. 25, lines 26-31).

8. As per claims 7,17 Takashima-Naegeli disclosed wherein the step of determining a delay determines the delay based on at least a data packet size, bandwidth, and number of sessions (Takashima, col. 12, lines 25-33 & col. 25, lines 26-31).
9. As per claims 8,18 Takashima-Naegeli disclosed wherein the step of determining a delay determines the delay from a formula $D = 1000 * (1 / (B * 1000000)) * 1' * 8 * S$ where D is the delay in milliseconds, B is a bandwidth in megabits per second, P is a data packet size in bytes, and S is a maximum number of sessions.
10. As per claims 9,19 Takashima-Naegeli disclosed wherein the step of configuring configures the maximum 5 bandwidth based on a desired bandwidth specified by a user (Naegeli, col. 8, lines 35-38).
11. As per claims 10,20 Takashima-Naegeli disclosed wherein the step of configuring configures the maximum bandwidth based on a predetermined value (.Naegeli, col. 8, lines 35-38).
12. As per claim 21,22 Takashima-Naegeli disclosed wherein the maximum bandwidth is specified by a user (Takashima, col. 28, lines 24-44).

Applicant's arguments are as follows:

13. Applicant argued that Office Action did not disclose proper motivation to combine the disclosures of Takashima and Naegeli.

As to applicant's argument prior art disclosed In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art.

See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Naegeli disclosed the upstream receiver and related hardware components are designed or configured to receive data at the maximum bandwidth at the maximum symbol rate in the method of Takashima to reduce the congestion during transmission of the data packet and allocation of the bandwidth make it more efficient during data transmission.

14. Applicant argued that prior art did not disclose determining a delay for the at least one data transmission based on the maximum bandwidth specified.

As to applicant's argument Takashima disclosed it is difficult to determine the maximum bandwidth for a maximum delay guarantee service which must reference the parameters of receiver resource requests, attention must be paid when this system is utilized (col. 25, lines 26-31).

15. Applicant argued that prior art did not disclose configuring a maximum bandwidth for at least one data transmission.

As to applicant's argument Naegeli disclosed the upstream receiver and related hardware components are designed or configured to receive data at the maximum bandwidth at the maximum symbol rate (col. 8, lines 35-38).

Conclusion

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

17. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Adnan Mirza whose telephone number is (703)-305-4633.

18. The examiner can normally be reached on Monday to Friday during normal business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Martin Wallace can be reached on (571)-272-6159. The fax for this group is (703)-746-7239.

19. The fax phone numbers for the organization where this application or proceeding is assigned are as follows:

(703)-746-7239 (For Status Inquiries, Informal or Draft Communications, please label "PROPOSED" or "DRAFT");

(703)-746-7239 (For Official Communications Intended for entry, please mark "EXPEDITED PROCEDURE"), (703)-746-7238 (For After Final Communications).

20. Any Inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-305-3900.

Any response to a final action should be mailed to:

BOX AF

Commissioner of Patents and Trademarks Washington, D.C.20231

Or faxed to:

Hand-delivered responses should be brought to 4th Floor Receptionist, Crystal Park II,
2021 Crystal Drive, Arlington, VA 22202.

AM
Adnan Mirza
Examiner


Adnan MIRZA
AV. 2145
PRIMARY EX-